



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2020-0469]

RIN 1625-AA08

Special Local Regulation; Boat Parade; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation (SLR) on the waters of San Diego Bay, California on September 6, 2020. This temporary SLR is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. This SLR temporarily establishes a designated section of the commercial anchorage area as a First Amendment area to be used at the discretion of the the Captain of the Port, or his designated representative as a spectator area. Parade participants operating within the SLR shall comply with all instructions given by the on-scene PATCOM monitoring the event. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from noon to 4 p.m. on September 6, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the

docket, go to <https://www.regulations.gov>, type USCG-2020-0469 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Merridith Morrison, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278-7656, e-mail D11MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable due to the short time between the Coast Guard becoming aware of the event on July 24, 2020, and the scheduled event occurring on September 6, 2020. The marine event sponsor of this boat parade is expecting to draw a high concentration of vessels to the San Diego Bay area along the proposed parade route. Traditionally, the

San Diego Bay area serves as a major thoroughfare for commercial traffic, naval operations, ferry routes, and a number of other recreational uses. The Coast Guard is establishing this SLR to monitor the parade before, during, and after the event to minimize impacts on this congested waterway. We must establish this SLR by September 6, 2020 to ensure the safety of individuals, property, and the marine environment and we do not have sufficient time to request and respond to comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with the location, size and complexity of the boat parade that is planned to take place on September 6, 2020.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port (COTP) Sector San Diego has determined that potential hazards associated with the proposed parade will be a safety concern for anyone within the vicinity of the parade route. This rule is needed to protect personnel, vessels, spectators, and the marine environment in the navigable waters within the SLR during the enforcement period of this rule.

IV. Discussion of the Rule

This rule establishes an SLR from noon until 4 p.m. on September 6, 2020. The SLR will cover all navigable waters on a pre-determined course in the northern portion of the San Diego Main Ship Channel from Shelter Island Basin, past the Embarcadero,

crossing the federal navigable channel and ending off of Coronado Island. This SLR will also temporarily establish a 200 yard radius within the commercial anchorage as a First Amendment area to be used as authorized by the Captain of the Port, or his designated representative. The First Amendment area will encompass all navigable waters, from surface to bottom, within 200 yards of 32°43'11.0" N, 117°10'59.8" W, within the commercial vessel anchorage.

The duration of the SLR is intended to protect personnel, vessels, specators, and the marine environment in these navigable waters while the parade is scheduled to occur. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. The Coast Guard will publish a LNM that details the vessel restrictions of the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the SLR may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an SLR lasting only 4 hours that will monitor entry to the SLR for the duration of the enforcement period to cover before, during and after the parade has concluded. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels. All non-participant vessels or persons engaged in protest activity will be directed to the commercial vessel anchorage if they wish to remain in the regulated area.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS.

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T11-034 to read as follows:

§ 100.T11-034 Boat Parade, San Diego, CA.

- (a) *Regulated areas.* The regulations in this section apply to the following area:

- (1) All navigable waters, from surface to bottom, on a pre-determined course in the northern portion of the San Diego Main Ship Channel from Shelter Island Basin, past the Embarcadero, crossing the federal navigable channel and ending off of Coronado

Island.

(2) All navigable waters, from surface to bottom, within 200 yards of 32°43'11.0" N, 117°10'59.8" W, within the commercial vessel anchorage.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participants in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector San Diego or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector San Diego JHOC at 619-278-7033. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) All non-participants, including those engaged in protest activity, may be directed by a designated representative to the enforcement area described in section (a)(2) of this section, where they must remain during the effective period unless otherwise authorized or directed.

(4) The COTP will provide notice of the regulated area through advanced notice

via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from noon to 4 p.m. on Sunday, September 6, 2020.

Dated: August 14, 2020.

T.J. BARELLI

Captain, U.S. Coast Guard,

Captain of the Port San Diego.

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